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CONCORD, N.H.

October 29, 1958

Mr. John E. Dodge
Conservation Educator
Fish and Game Department
34 Bridge Street
Concord, New Hampshire

Dear Mr. Dodge:

This is an attempt to briefly summarize certain matters discussed at Monday's conference with respect to problems currently facing the Sub-Committee on Free Public Access to Natural Ponds.

A Great Pond is one which in its natural state comprises ten acres or more. Concord v. Robertson, 66 N.H. 1. Great Ponds are public waters and absolute ownership of abutters ceases at the high water mark. In Great Ponds the public has the right to fish, fowl, bathe, skate, boat and cut ice. Whitcher v. State, 87 N.H. 405. Abutters, or littoral owners have certain rights above and beyond those enjoyed by members of the public generally. These include the right to erect wharves or other structures in a reasonable manner consistent with public use. Dolbear v. Company, 72 N.H. 562.

We also discussed the right of the public to freely pass across state owned land to public bodies of water. We specifically considered land of the Laconia State School adjacent to Winnisquam. In our opinion the fact that land is state owned rather than privately owned does not give the public the right to pass across it at will.

With reference to the maintenance of highways to public waters laid out under RSA chapter 235 we call your attention to section 8 of that chapter which provides that such highways shall be deemed Class V highways and shall be maintained by the town or towns in which the highway is laid out unless the Governor and Council shall otherwise determine.

With reference to whether more than one access should be provided in the case of larger ponds we advise that this is a matter within the discretion of the Governor and Council.

Very truly yours,

Elmer T. Bourque
Assistant Attorney General

ETB/g